

STATE OF MICHIGAN
COURT OF APPEALS

MERRI DORKINS,

Plaintiff-Appellant,

v

CITY OF PONTIAC,

Defendant-Appellee.

UNPUBLISHED

November 16, 2006

No. 269265

Oakland Circuit Court

LC No. 2005-070761-CZ

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court order granting summary disposition to defendant pursuant to MCR 2.116(C)(7) on plaintiff's claim alleging defamation and abuse of process. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant hired plaintiff as a clerk typist in February 1988. The employment application asked applicants if they had ever been convicted of a felony and provided that "any misstatement or omission of fact on this application shall be considered cause for disqualification of such application, and that if employed shall be considered cause for dismissal." In 2001, plaintiff engaged in a protest to recall Willie Payne, defendant's then mayor. After the protests, plaintiff had several "run-ins" with Mayor Payne. On September 19, 2003, defendant, through the acting director of community development, informed plaintiff that it had recently come to defendant's attention, without disclosing how, that plaintiff had pleaded guilty to attempted embezzlement on August 20, 1984, but she had not disclosed this on her employment application. Defendant immediately suspended plaintiff without pay with the intent to terminate plaintiff's employment. Plaintiff alleges that she subsequently was unemployed for 18 months and was sued by her creditors because she was unable to pay her bills. Plaintiff also claims that she experienced extreme embarrassment and economic loss. After plaintiff contested her firing through her union, she was reinstated and given back wages.

Plaintiff sued defendant in November 2005 alleging defamation and abuse of process. Plaintiff alleged that defendant abused process by firing her for an ulterior purpose and improperly using "a lawsuit, ordinances and other police enforcement to threaten" her. Plaintiff contended that defendant investigated her criminal background after her criticism of the mayor. Defendant moved for summary disposition under MCR 2.116(C)(7) (governmental immunity) and (8) (failure to state a claim). The circuit court granted defendant's motion for summary

disposition and dismissed plaintiff's complaint under MCR 2.116(C)(7), reasoning that defendant was engaged in a governmental function when it terminated plaintiff's employment and was therefore immune from liability for any statements made in connection with the discharge.

On appeal, plaintiff first contends that defendant was not engaged in a governmental function when it investigated her criminal background and, therefore, was not immune from tort liability. We disagree. This Court reviews de novo the grant or a denial of a motion for summary disposition. *Spiek v Dept of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Under the governmental immunity act, a governmental function is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. MCL 691.1401(f); *Mack v Detroit*, 467 Mich 186, 204; 649 NW2d 47 (2002). The term "governmental function" is broadly construed, and the statutory exceptions to immunity are narrowly construed. *Maskery v University of Michigan Board of Regents*, 468 Mich 609, 613-614; 664 NW2d 165 (2003); *Kerbersky v Northern Michigan University*, 458 Mich 525, 529; 582 NW2d 828 (1998). Further, governmental immunity continues to apply to a governmental agency even when it improperly performs a general governmental function that is authorized by law. *Richardson v Jackson County*, 432 Mich 377, 385; 443 NW2d 105 (1989). The screening, hiring, and supervision of public employees are governmental functions. *Bozarth v Harper Creek Board of Education*, 94 Mich App 351, 353; 288 NW2d 424 (1979). When defendant hired, supervised, and later fired plaintiff after defendant learned that plaintiff had omitted disclosing her felony conviction on her employment application, it was supervising a public employee and, therefore, engaged in an authorized governmental function, even if it learned of plaintiff's criminal history by improper means. Therefore, governmental immunity applies to defendant's actions in this case.

Plaintiff also contends that she was not required to disclose this conviction because her conviction was a misdemeanor or a "high-court misdemeanor." However, plaintiff has not shown any legal basis for this characterization of her conviction. When plaintiff pleaded guilty in 1984, embezzlement by an agent involving property worth more than \$100 was a felony punishable by a sentence up to ten years in prison and a \$5,000 fine. MCL 750.174 (1957). Plaintiff was sentenced to two years' probation with the first 30 days in the Oakland County Jail. Plaintiff did not disclose this felony conviction on her application, even though she was required to do so by the terms of the application.

Plaintiff next maintains, based on MCL 28.214(1)(a)(i), that a governmental agency's use of LEIN to obtain information about a person's criminal history is statutorily limited to "administer criminal justice or enforce any law." However, review of the complaint reveals that plaintiff did not allege a violation of the LEIN system. Moreover, there is no documentary evidence to indicate that defendant conducted a LEIN check. Accordingly, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio